

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1409

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

BLAIR WATSON,
Appellant.

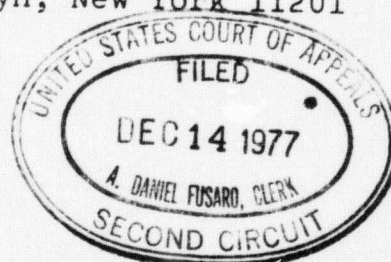
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

PETER A. PASSALACQUA, ESQ.
Attorney for Appellant
32 Court Street
Brooklyn, New York 11201

PETER J. FABRICANT, ESQ.,
Of Counsel



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RJD:SES:rcw
P. 771,610

*Entered - 5/19/77
at home*

*Peter A. Passalacqua, Esq.
32 Court St
B'klyn, N.Y. 852-2634*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

BLAIR WATSON,

Defendant.
----- X

Platt. 8
I N D I C T M E N T

Cr. No. 77CR307
(T. 18, U.S.C., §2113(a),
§2113(d) and §2)

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 22nd day of February, 1977, within the Eastern District of New York, the defendant BLAIR WATSON knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Citibank, 70-78 Kissena Boulevard, Queens, New York, approximately Eleven Thousand Seven Hundred Seventeen Dollars and Fifty-Four Cents (\$11,717.54), in United States currency, which money was in the care, custody, control, management and possession of the said Citibank the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, §2113(a) and §2)

COUNT TWO

On or about the 22nd day of February, 1977, within the Eastern District of New York, the defendant BLAIR WATSON knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Citibank, 70-78 Kissena Boulevard, Queens, New York, approximately Eleven Thousand Seven Hundred Seventeen Dollars and Fifty-Four Cents (\$11,717.54), in United States

currency, which money was in the care, custody, control, management and possession of the said Citibank the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant BLAIR WATSON did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon.

(Title 18, United States Code, §2113(d) and §2.)

A TRUE BILL.

FOREMAN

DAVID G. TRAGER
United States Attorney
Eastern District of New York

FELONY Fel X 207 Office	vs. BLAIR WATSON (LAST FIRST MIDDLE)	PLATT, J. 77 307 1 Yr. Doc. No. Def.	U.S. TITLE/SECTION 18:2113(a)(4) & 2	OFFENSES CHARGED Bank robbery and use of a dangerous weapon	ORIGINAL COUNTS 2
U.S. MAJ. CASE No. 77M1047			AMI ☐ Fugitive ☐ Set ☐ Pers. Recog. ☐ PSA ☐ \$75,000 ☐ Conditions ☐ Date 5-19-77 ☐ Deposit ☐ Bail Not Made ☐ Collateral ☐ Status Changed (See Deft.) ☐ 3rd ☐ Pity Cust ☐ Other ☐		
KEY DATES CONTINUED ARREST 6-2-77 6-10-77 6/28/77 6/28/77 6/30/77 U.S. COUNTY 6-10-77 6/28/77 6/30/77 U.S. DISTRICT COURT 6-10-77 6/28/77 6/30/77 U.S. ATTORNEY 6-10-77 6/28/77 6/30/77					

MAGISTRATE		DATE 5-19-77		INITIAL/NO.		INITIAL APPEARANCE DATE 5-19-77		INITIAL/NO.		OUTCOME.	
Search Warrant	Issued	DATE	INITIAL/NO.	PRELIMINARY EXAMINATION		Date Scheduled 5-31-77		Tape Number		DISMISSED ☐ HELD FOR GOV OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GOV OR OTHER PROCEEDING IN DISTRICT BELOW ☐	
	Return			OR		Date Held					
Summons	Issued										
	Served										
Arrest Warrant Issued		5-17-77	ASC/07AE	☐ REMOVAL HEARING		☐ WAIVED ☐ NOT WAIVED				ASC 07AE	
COMPLAINT		5-17-77	ASC/07AE	☒ INTERVENING INDICTMENT							
OFFENSE (In Complaint)		Title 18 USC Sections 2113(a) and 2113(d): Bank Robbery.									

U.S. Attorney or Asst.

ATTORNEYS

Defendant **X** CJA **X** ReLL **X** Waive **X** Sall **X** None **X** PD **X** CP

Susan Shepard

~~Charles Termini, Esq.~~

Peter Passalacqua

32 Court St.

857-2634

Brooklyn, NY. 11201

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (b) (c) (d)
6-2-77		Before CHREIN J - Indictment filed.	
6-10-77		Before Platt, J - case called - deft & atty C.Termini present - motion by Legal Aid to be relieved as counsel - granted - Peter Passalacqua assigned as counsel for the deft. deft waives reading of the indictment and enters a plea of not guilty - adjd to 9-23-77 for motions and to set a date for trial. defts motion for reduction of bail argued & denied -Bail \$75,000 contd.	
6-13-77		By Platt, J - Order appointing counsel filed.	
6-23-77		Letter filed dated June 22, 1977 re bill of particulars to Peter Passalacqua, Esq. from AUSA Shepard	
6/23/77		Before Platt, J-case called-deft & counsel present-trial set for down for 6/23/77. jlj	
6-28-77		Before Platt, J - case called - deft & counsel Peter Passalacqua present - Wade hearing (read & on Govts motion) hearing concluded - jurors selected and sworn - trial contd to 6-29-77. Govts motion to compel defts participation in line-up granted.	

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----x
UNITED STATES OF AMERICA, :
Plaintiff :
BLAIR WATSON, : 77CR 307
Defendant :
-----x

United States Courthouse
Brooklyn, New York
June 30th, 1977

B E F O R E:
HONORABLE THOMAS C. PLATT, U.S.D.J.

DENNIS SCHONHAUT
EASTERN DISTRICT COURT REPORTERS

(Whereupon, the jurors and alternate jurors entered the courtroom and each took his respective seat in the jury box.)

THE CLERK: Criminal Court on trial, United States versus Blair Watson.

THE COURT: All right, now, ladies and gentlemen, I am going to give you instructions on the law in this case. Unfortunately for you, it is my practice to read the instructions to you. I realize it makes it more difficult for you to follow as it requires more attention on your part. On the other hand, it minimizes the risk of error and that is very important, particularly in a criminal case such as this, so I beg your indulgence and ask you to pay particularly close attention to the reading of the charge. If my voice starts to drop off and you start to miss any portion of the charge, let me know. Give me a wave or something that catches my attention because I don't want you to miss the instructions or any part thereof.

Now, that you have heard the evidence and the argument, it becomes my duty to give the instructions of the court as to the law applicable to this case. It is your duty as jurors to follow the law as stated

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2 in the instructions of the court and to apply the
3 rules of law so given to the facts as you find them
4 from the evidence in the case. You are not to single
5 out one instruction alone as stating the law, but
6 must consider the instructions as a whole. Neither
7 are you to be concerned with the wisdom of any rule
8 of law stated by the court. Regardless of any opinion
9 you may have as to what the law ought to be, it would
10 be a violation of your sworn duty to base your verdict
11 upon any other view of the law than that given in the
12 instructions of the court, just as it would be a vio-
13 lation of your sworn duty as judges of the facts to
14 base a verdict upon anything but the evidence in the
15 case.

16 You must not permit yourselves to be governed
17 by sympathy, bias, prejudice or any other considera-
18 tions not founded on evidence and these instructions
19 on the law. Justice through trial by jury must always
20 depend upon the willingness of each individual juror
21 to seek the truth as to the facts from the same evidence
22 presented to all the jurors and to arrive at a verdict
23 by applying the same rules of law as given in the
24 instructions of the court.

25 Now, you have been chosen and sworn as jurors

Charge of the Court

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2 in this case to try the issues of fact presented
3 by the allegations of the indictment and the
4 denial made by the not guilty plea of the accused.
5 You are to perform this duty without bias or prejudice
6 as to any party. Again, the law does not permit
7 jurors to be governed by sympathy, prejudice, or public
8 opinion. Both the accused and the public expect that
9 you will carefully and impartially consider all the
10 evidence in the case, follow the law as stated by the
11 court and reach a just verdict regardless of the con-
12 sequences.

13 Now, I am not going to send the exhibits which
14 have been received in evidence with you as you retire
15 for your deliberations. You are entitled, however,
16 to see any or all of the exhibits as you consider
17 your verdict. I suggest that you begin your determina-
18 tions and then, if it will be helpful to you, you may
19 ask for any or all of the exhibits simply by sending
20 a note to me through one of the deputy marshals who
21 will be stationed outside your jury room door.

22 Similarly, with respect to any read back of
23 testimony, I urge you, and indeed implore you not to
24 go to the jury room and immediately start sending me
25 notes requesting the read back of one or more portions

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2 of one or more witnesses. Just as you must consider
3 these instructions as a whole, so also should you
4 consider the testimony which you have heard from the
5 witnesses as a whole. If you start asking for the
6 read back of one particular witness, a portion of one
7 particular witness' testimony, you may give undue
8 weight to that portion which has been read back to
9 you and lesser weight to the testimony which you have
10 not had read back to you, so keep that in mind.

11 If you feel, after giving all of the testimony
12 a fair consideration, that you must have a portion of
13 a witness' testimony read back, of course you may
14 have the same read back, but don't do it just as the
15 first thing you do when you get into the jury room.

16 Consider the testimony and the evidence and
17 the exhibits and the instructions as a whole in the
18 first instance.

19 An indictment is but a form or method of
20 accusing a defendant of a crime. It is not evidence
21 of any kind against the accused.

22 There are two types of evidence from which a
23 jury may properly find a defendant guilty of a crime.
24 One is direct evidence such as the testimony of an
25 eye witness. The other is circumstantial

evidence, the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind.

For example, the footprint of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island, and, indeed, there was, the man Friday. Thus, on the one hand, you may have direct evidence of an issue, and, on the other hand, you may have circumstantial evidence of an issue. The law does not hold that one type of evidence is necessarily of better quality than the other.

The law requires only that the government proves its case beyond a reasonable doubt both on the direct and the circumstantial evidence. At times, the jury may feel that circumstantial evidence is better quality; at other times, they may feel direct evidence is a better quality. That judgment is left entirely up to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Charge of the Court

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Now, the law presumes the defendant to be innocent of crime. Thus, a defendant, although accused, begins a trial with a clean slate, with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So, the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt that the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Now, a reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others.

It is not necessary for the government to prove the guilt of the defendant beyond all possible doubt.

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2 If that were the rule, very few people could ever
3 be convicted of anything. It is practically impossible
4 for a person to be absolutely sure and convinced of
5 any controverted fact which, by its nature, is not
6 susceptible of mathematical certainty.

7 The law says a doubt should be a reasonable
8 doubt, not a possible doubt.

9 A reasonable doubt is a doubt based upon reason
10 and common sense, the kind of doubt that would make
11 a reasonable person hesitate to act. Proof beyond
12 a reasonable doubt must, therefore, be proof of such
13 a convincing character that you would be willing to
14 rely and act upon it unhesitatingly in the most
15 important of your own affairs.

16 The jury will remember that a defendant is never
17 to be convicted on mere suspicion or conjecture. Again,
18 a reasonable doubt means a doubt sufficient to cause
19 a prudent -- I'm sorry. Again, a reasonable doubt
20 means a doubt that is based on reason and must be
21 sufficient to cause a prudent person to hesitate to
22 act in the most important affairs of his or her life.

23 The requirement of proof beyond a reasonable
24 doubt operates on the whole case, not on the separate
25 bits of evidence. Each individual item of evidence

need not be proven beyond a reasonable doubt.

Now, Count 1 of the indictment provides that on or about the 22nd day of February, 1977, within the Eastern District of New York, the defendant, Blair Watson, knowingly and willfully, by force, violence and intimidation, did take from the person and presence of employees of the City Bank, 70-78 Kissena Boulevard, Queens, New York, approximately \$11,717.54 in United States currency, which money was in the care, custody and control of the management of the said City Bank; the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, all in violation of Title 18, U.S. Code Section 2113A and 18 USC Section 2, the latter being the aiding and abetting section.

The statute alleged to have been violated in Count 1 of the indictment, namely, 2113A, reads in pertinent part as follows:

Whoever by force and violence or by intimidation takes or attempts to take from the person or presence of another any property or money or any other thing of value belonging to or in the care, custody, control, management, possession of any bank, credit union or savings and loan association shall be in vio-

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2 lation of the law. In this count, the government
3 also alleges the violation of Section 2 of Title 18
4 of United States Code, which is the so-called aiding
5 and abetting section and which reads as follows:

6 Whoever commits an offense against the United
7 States or aids, abets, counsels, commands, induces, or
8 procures its commission is punishable as a principal.
9 Whoever willfully causes an act to be done which, if
10 directly performed by him or another would be an of-
11 fense against the United States, is punishable as a
12 principal.

13 The essential elements of the crime charged
14 in Count 1 of the indictment, which must be proven
15 beyond a reasonable doubt, are: 1. the act or acts
16 of taking from the person or presence of another,
17 money belonging to, or in the care, custody, control,
18 management, or possession of a bank as charged.
19 2. the act or acts of taking by force, violence or
20 by intimidation. 3. the doing of such an act or acts
21 knowingly and willfully, and 4. the bank was a bank,
22 the deposits. of which were insured by the FDIC.

23 Now, it is charged in Count 2 of the indictment,
24 that on or about the 22nd day of February, 1977, within
25 the Eastern District of New York, the defendant, Blair
Watson, knowingly and willfully, by force, violence

and intimidation, did take from the person and presence of employees of the bank, City Bank, 70-78 Kissena Boulevard, Queens, New York, approximately \$11,717.54, which money was in the care, custody and control of the said City Bank, the deposits of which were there insured by the FDIC, and, in commission of this act and offense, the defendant, Blair Watson, did assault and place in jeopardy the lives of the said bank employees as well as the lives of other person present by the use of a dangerous weapon, all in violation of Title 18 US Code Section 2113D and Section 2, the aiding and abetting section.

The statute alleged to have been violated in Count 2 of the indictment reads in pertinent part as follows:

2113D - Whoever, in committing or attempting to commit any offense defined in subsection A, that is the subsection I read to you in connection with Count 1 of this section, assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be in violation of the law.

This count also charges a violation of Section 2 of Title 18, the so-called aiding and abetting sec-

tion which I just read to you a moment ago. The following are the essential elements of the crime which are required to be proven beyond a reasonable doubt in order to establish the offense charged in Count 2 of the indictment.

1. The act or acts of taking from the presence or person of another money belonging to or in the care, custody, management or possession of a bank as charged.

2. The act or acts of taking by force, violence or by intimidation.

3. The act or acts of assaulting or putting in jeopardy the life of any person by the use of a dangerous weapon or device while engaged in taking such money from a bank as charged.

4. Doing such act or acts knowingly and/or willfully, and

5. The bank was one, the deposits of which were insured by the FDIC.

I said, knowingly or willfully; I meant knowingly and willfully.

5. The bank was one, the deposits of which were insured by the FDIC.

Now, as used in this section, 2113A and 2113D,

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2 the term bank means any bank, the deposits of which
3 are insured by the FDIC. You will recall, at least
4 it is my recollection -- it is your recollection that
5 controls -- that there is a stipulation between the
6 parties that the deposits of the City Bank, and par-
7 ticularly this branch, were insured by the FDIC.
8 That stiupulation was marked in evidence as an
9 exhibit which you may see, of course, should you wish
10 to.

11 To take or attempt to take by intimidation,
12 which is an element of both counts, means willfully
13 to take or attempt to take by putting in fear of
14 bodily harm. Such fear must aris from the willfull
15 conduct of the accused rather than from some mere
16 temperamental timidity of the victim. However, the
17 fear of the victim need not be so great as to result
18 in terror, panic or hysteria.

19 A taking or an attempted taking by intimidation
20 must be established by proof of one or more acts or
21 statements of the accused which were done or made in
22 such a manner and under such circumstances as would
23 produce in the ordinary person fear of bodily harm.
24 However, actual fear need not be proved. Fear, like
25 intent, may be inferred from statements that were made

or acts that were done or omitted by the accused and by the victim as well, and by all the facts and circumstances shown by the evidence in the case.

If the jury should find beyond a reasonable doubt from the evidence in the case that the accused did willfully commit robbery of the bank as charged, then the jury must proceed to determine whether the evidence in the case establishes the accused in committing the robbery in the bank, assaulted or put in jeopardy the lives of the said bank employees as well as the lives of other persons present as charged in the indictment.

Any willfull attempt or threat to inflict injury upon the person of another, when coupled by an apparently present ability to do so or any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm, constitutes an assault.

An assault may be committed without actually touching or striking or doing bodily harm to the person of another. So a person who has the apparent present ability to inflict bodily harm or injury on another person and willfully attempts or threatens to inflict such bodily harm by intentionally flourishing

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2 or pointing a pistol or gun at another person may
3 be found to have assaulted such a person.

4 A dangerous weapon or device includes anything
5 capable of being readily operated or manipulated,
6 wielded or otherwise used by one or more persons to
7 inflict severe bodily harm on another person. So, an
8 operable fire arm such as a pistol, revolver or other
9 gun capable of firing a bullet or other ammunition
10 may be found to be a dangerous weapon or device.

11 Put in jeopardy the life of a person by use
12 of a dangerous weapon or device means to expose such
13 person to the risk of death or to the fear of death
14 by the use of such dangerous weapon or device.

15 Any variance between the allegations of the
16 indictment and the evidence in the case as to the
17 size and type of any fire arm or gun which may have
18 been involved in the commission of the alleged offense
19 is immaterial. There is no question in this case that
20 the City Bank possessed the money which was stolen from
21 it by one or more persons. Indeed, I think the parties
22 stipulated -- again, it is your recollection which
23 controls, but I think there is a stipulation into
24 evidence which states that from the City Bank there
25 was stolen the \$11,000 some odd dollars which was

specified in the two Counts of the indictment.

Section 2 of Title 18 of United States Code provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal. And whoever causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged. In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense.

Participation is willfull if done voluntarily and intentionally and with a specific intent to do something the law forbids or with a specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with a criminal venture and willfully participate in it as he would in something

he wishes to bring about, that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission, is willfully done, if done voluntarily and intentionally and with specific intent to do something the law forbids or with a specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or disregard the law.

You, of course, may not find the defendant guilty unless you find beyond a reasonable doubt that every element of the offense, as defined in these instructions, was committed by some person or persons and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed is not sufficient to establish that the defendant aided and abetted in the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Now, the parties concede that the most important issue in this case is the identification of the accused as the perpetrator, as one of the perpetrators of the crime. The government has the burden of proving

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2 that the accused committed the crime. The jury must
3 be satisfied beyond a reasonable doubt that the accused
4 was one of the perpetrators of the crime before you
5 may convict. If you are not convinced beyond a rea-
6 sonable doubt, then you must the accused not guilty.

7 Identification testimony is an expression of
8 belief or impression by the witness. Its value de-
9 pends on the opportunity the witness had to observe
10 the offender at the time of the offense and to make a
11 reliable identification later. In appraising the
12 identification testimony of the witnesses, you should
13 consider the following:

14 1. Whether the witness had the capacity and an
15 adequate opportunity to observe the offender. This
16 will depend on all the circumstances at the time the
17 witness observed the offender. This includes how long
18 or short a time the witness saw the offender, how far
19 or close the witness was to the defendant, the light-
20 ing conditions at the time, the position from which the
21 witness viewed the accused, the emotional state of the
22 witness at the time.

23 2. In court identification and identification
24 made prior to trial, you may take into consideration
25 a) the strength of the identification - was the witness

1 absolutely sure, reasonably sure or in such serious
2 doubt as to the resemblance to the defendant that the
3 identification testimony is worthless? b) Scrutinize
4 all the circumstances under which the identification
5 was made prior to the trial. If the identification
6 was through a spread of photographs, take into con-
7 sideration first, when the identification was made -
8 was it soon after the crime was completed, or had a
9 long time elapsed? Second, did the witness pick the
10 accused out as the perpetrator from a group of similar
11 individuals? Identification from a line-up-- was
12 the line-up arranged so as to be a fair sampling of a
13 group of individuals who looked like the defendant?
14 How soon after the crime or how long after the crime
15 committed was the identification made?
16

17 The strength of the witness' identification,
18 the failure of a witness to identify an accused.
19 Consider the credibility of each witness on the issue
20 of identification -- I'm sorry.

21 What of the failure of a witness to identify an
22 accused? Consider the credibility of each witness on
23 the issue of identification as in every other issue.

24 Identification of an accused made from a group
25 of people that look alike is more reliable than an

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2 identification made where only the accused is presented
3 to the witness. Again, I remind you that the govern-
4 ment's duty is not to prove that the accused was the
5 perpetrator of the crime beyond all possible doubt.
6 The government's burden is not to prove the identifi-
7 cation proof with absolute certainty. The govern-
8 ment's burden is to prove that the accused was one of
9 the perpetrators of the crime by proving the same
10 beyond a reasonable doubt.

11 In considering whether the accused is one of
12 the perpetrators of the crime, take into consideration
13 all of the evidence in the case. An act is done
14 knowingly if done voluntarily and intentionally, and
15 not because of mistake or accident or other innocent
16 reason. The purpose of adding the word "knowingly"
17 is to insure that no one would ever be convicted of
18 an act done by mistake or accident or other innocent
19 reason. An act is willfully done, voluntarily and
20 intentionally and with a specific intent to do some-
21 thing the law forbids, that is to say with bad purpose
22 either to disobey or to disregard the law.

23 Knowledge and intent ordinarily may not be
24 proved directly because there is no way of fathoming
25 or scrutinizing the operation of the human mind, but

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2 you may infer a defendant's knowledge from the sur-
3 rounding circumstances. You may consider any state-
4 ment made and done or admitted by a defendant and all
5 of the facts and circumstances and evidence which
6 indicate his state of mind.

7 Statements and arguments of counsel are not
8 evidence in the case unless made as an admission or
9 stipulation of fact. There have been certain stipu-
10 lations of fact which I have alluded to and which are
11 in evidence. When the attorneys on both sides
12 stipulate or agree to the existence of a fact, you
13 must, unless otherwise instructed, accept a stipu-
14 lation as evidence and regard that fact as proved.
15 Unless you are otherwise instructed, the evidence
16 in the case always consists of the sworn testimony
17 of the witnesses, regardless of who may have called
18 them, and all exhibits received in evidence, regard-
19 less of who may have produced them, and all facts
20 which have been admitted or stipulated and all applic-
21 able presumptions stated in these instructions.

22 Any questions as to which an objection was
23 sustained by the Court, and any evidence ordered
24 stricken by the Court must be entirely disregarded.
25 Evidence does include, however, what was brought out

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2 by witnesses on cross examination as well as what
3 was testified by witnesses on direct examination.

4 Unless you are otherwise instructed, anything
5 you may have seen or heard outside the courtroom is
6 not evidence and must be entirely disregarded. You
7 are to consider only the evidence in the case, and
8 your verdict is to be based on the evidence only.
9 But in your consideration of the evidence, you are
10 not limited to the bald statements of the witnesses.
11 In other words, you are not limited solely to what
12 you see and hear as the witnesses testify.

13 You are permitted to draw from facts which you
14 find have been proved such reasonable inferences as
15 you feel are justified in the light of experience.
16 Inferences are deductions or conclusions which reason
17 and common sense lead the jury to draw from facts
18 which have been established by the evidence in the
19 case. If a lawyer asks a witness a question which
20 contains assertion of fact, you may not consider the
21 assertion as evidence of that fact.

22 As I have said many times, the lawyers' state-
23 ments are not evidence. You as jurors are the sole
24 judges of the credibility of the witnesses and the
25 weight their testimony deserves.

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2 You should carefully scrutinize all the
3 testimony given and the circumstances under which
4 each witness testified and every matter in evidence
5 which tends to show whether the witness is worthy of
6 belief. Consider each witness' intelligence, motive
7 and state of mind and demeanor and manner while on
8 the stand. Consider the witness' ability to observe
9 the matters as to which he or she has testified and
10 whether he or she impresses you as having an accurate
11 recollection of these matters.

12 Consider also any relation each witness may bear
13 to either side of the case, the manner in which each
14 witness may be affected by the verdict and the strength
15 to which, if at all, each witness is either supported
16 or contradicted by other evidence in the case.

17 Inconsistencies or discrepancies in the testi-
18 mony of a witness or between the testimony of different
19 witnesses may or may not cause a juror to discredit
20 such testimony. Two or more persons witnessing an
21 incident or a transaction may see or hear it differently.
22 And innocent misrecollection, like failure of recollec-
23 tion is not an uncommon experience. In weighing the
24 effect of a discrepancy, always consider whether it
25 pertains to a matter of importance or an unimportant

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2 detail and whether the discrepancy results from
3 innocent error or intentional falsehood. After making
4 your own judgment, you will give the testimony of
5 each witness such credibility, if any, as you may
6 think it deserves.

7 The testimony of a witness may be discredited
8 or impeached by showing that he or she previously
9 made statements which are inconsistent with his or
10 her present testimony. It is the province of the
11 jury to determine the credibility, if any, to be
12 given to testimony of a witness who the jury feels
13 has been impeached. If a witness is shown knowingly
14 to have testified falsely concerning any material
15 matter, you have a right to disregard such witness'
16 testimony. On other issues and you may reject the
17 testimony of such witness or give it such credibility
18 as you think it deserves.

19 The law does not compel a defendant in a crimi-
20 nal case to take the witness stand and testify, and
21 no presumption of guilt may be raised and no infer-
22 rence of any kind may be drawn from the failure of a
23 defendant to testify.

24 As stated before, the law never imposes upon
25 a defendant in a criminal case the burden or duty

of calling any witnesses or of producing any evidence. It is the duty of the attorneys on each side of the case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his or her client because the attorney has made objections. Upon allowing the testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

As I stated before, you are the sole judges of the credibility of all witnesses and the weight and effect of all evidence. When the court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he or she had been permitted to answer any question.

The fact that the Court has asked one or more questions of the witness for clarification or admissibility of evidence purposes is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendant in



1 but do so only after an impartial consideration of
2 the evidence in the case with your fellow jurors.
3 In the course of your deliberations, do not hesitate
4 to reexamine your own views and change your opinion
5 if convinced it is erroneous, but do not surrender
6 your honest conviction as to the weight or effect of
7 evidence solely because of the opinion of your fellow
8 jurors or for the mere purpose of returning a verdict.

9 Remember at all times you are not partisans,
10 you are judges, judges of the facts. Your sole
11 interest is to seek the truth from the evidence in
12 the case. There is nothing peculiarly different in
13 the way a jury should consider the evidence in a
14 criminal case from that in which all reasonable per-
15 sons consider any question depending upon evidence
16 presented to them. You are expected to use your good
17 common sense. Consider the evidence in the case for
18 only those purposes for which it has been admitted and
19 give it a reasonable and fair construction in light
20 of your common knowledge of the natural tendency and
21 inclinations of human beings.

22 If the accused be proved to be guilty beyond
23 a reasonable doubt, say so. If not so proved to be
24 guilty, say so. You must render a verdict with respect
25 to each of the two counts of the indictment. If any

reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, the juror sitting closest to me, juror number one, the lady in the green suit or dress, rather, will act as your forelady unless she chooses not to do so. If she chooses not to do so, then you will elect a fore person from amongst your number. The fore person will preside over you at deliberations and will be your spokesman here and to the Court.

If it becomes necessary during the deliberations to communicate with the Court, you may send a note by a deputy marshal signed by your foreman or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court

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2 will never communicate with any member of the jury
3 on any subject touching the merits of the case other-
4 wise than in writing or orally here in court.

5 You will note from an oath which will be taken
6 shortly by the deputy marshals that they, too, as
7 well as all other persons are forbidden to communi-
8 cate in any way or manner with any member of the jury
9 on any subject touching the merits of the case.

10 Now, bear the following in mind because it
11 is very important. You are never, never to reveal
12 to any person, not even to me, the Court, how you
13 stand numerically or otherwise on the question of the
14 guilt or innocence of the accused until after you
15 have reached a unanimous verdict. In other words,
16 if at some point, you find yourselves numerically
17 divided one way or the other on the guilt or inno-
18 cence of the accused, do not, do not send me a note
19 saying we stand so many for conviction and so many for
20 acquittal. If you do, the chances are, the Court will
21 have to declare a mistrial and will have to impanel
22 another jury and retry the case. If you reach a
23 hopeless impasse, and I hope this doesn't occur, if you
24 should become deadlocked, you send me a note that you
25 are deadlocked, but don't tell me how you stand. When

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2 and if you reach a unanimous verdict, you send me a
3 note saying that you have reached a unanimous verdict
4 signed by your fore person and then you tell us what
5 that unanimous verdict is here in open court. You
6 don't put it in the note. You wait until you are
7 called in and are asked the questions by the clerk
8 with respect to the verdict which you have reached.
9 You don't write me a note saying we have reached a
10 verdict one way or another and advise me which way
11 you have reached, so reached a verdict.

12 Allright, ladies and gentlemen, those are the
13 instructions of the Court. I will take a few
14 minutes to discuss them with the attorneys, during
15 which you may take a brief recess. During that
16 recess, however, do not begin your deliberations.
17 Wait until I have had my opportunity to discuss the
18 instructions with the attorneys and then I will recall
19 you and discharge the alternates, swear in the deputy
20 marshals, and after that, you may begin, but not
21 before. So take a brief recess. Do not discuss
22 the case.

23 (Whereupon the jurors and the alternate jurors
24 left the courtroom.)

25 MS. SHEPARD: Satisfactory to the government,

1
2 your Honor.

3 MR. PASSALACQUA: Satisfactory to the defendant,
4 your Honor.

5 THE COURT: All right, bring them back.

6 (Whereupon the jurors and the alternate jurors
7 entered the courtroom and each took his respective
8 seat in the jury box.)

9 THE COURT: All right, ladies and gentlemen,
10 there are no additional instructions. So alternate
11 number one, your time has come, unfortunately, or
12 alternate number two. Alternate number one never
13 showed up today. Your time has come. Unfortunately
14 you can't sit on the deliberations, only twelve people
15 can. You do serve a useful function even though at
16 this point it may not seem so to you. If one or more
17 of your fellow jurors had become sick, you would have
18 been moved into their seat and would have been deliber-
19 ating. As so often happens, when we have an adequate
20 number of alternates, nobody gets sick, but as soon as
21 we don't choose an alternate, one or more jurors do
22 get sick, so thank you very much. You should check
23 downstairs with the central jury part and they will
24 let you know whether they have any further duties
25 for you to perform.

Charge of the Court

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ALTERNATE JUROR NUMBER TWO: I am going on vacation.

THE COURT: All right, you want to swear in the marshals.

(Whereupon a marshal was sworn by the clerk of the court.)

THE COURT: All right, ladies and gentlemen, now you may discuss the case.

(Whereupon, at 10:25 A.M. the jurors exited the courtroom and entered the jury room to commence deliberations.)

(Whereupon note from jury was marked Court's Exhibit I, for identification.)

(Whereupon, Government's Exhibits 3A through 3F inclusive and Government's Exhibits 8, 9, 10, 11, 12, 14, and 15 were sent into the jury room.)

(Luncheon recess.)

AFTERNOON SESSION

TRIAL CONTINUED

(Whereupon note from jury was marked the Court's Exhibit II, for identification.)

THE COURT: All right, you want to bring them in.

(Whereupon, at 3:13 P.M. the jury entered the

courtroom and the filing occurred.)

THE COURT: Madame Forelady, I have a note saying you reached a unanimous verdict. If that is the fact, would you mind rising and answering the questions of the clerk as he poses them?

THE CLERK: Madame Forelady, ladies and gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: Yes, we have.

THE CLERK: How do you find the defendant Blair Watson on Count 1 of the indictment?

THE FOREMAN: Guilty

THE CLERK: How do you find the defendant Blair Watson on Count 2 of the indictment?

THE FOREMAN: Guilty

THE CLERK: Ladies and gentlemen of the jury, as the Court has received your verdict, you say you find the defendant Blair Watson guilty on Count 1 of the indictment and guilty on Count 2 of the indictment and so say you all.

THE COURT: Madame Forelady, I will ask Mr. Nims to poll you. You don't have to rise. Just answer the questions he poses to you.

THE CLERK: Ladies and gentlemen of the jury, you have heard your verdict as the Court has received

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2 it. You say you find the defendant, Blair Watson,
3 guilty on Count 1 of the indictment and guilty on
4 Count 2 of the indictment. Juror number one, is that
5 your verdict?

6 JUROR NUMBER ONE: YES, your Honor

7 THE CLERK: Juror number two, is that your
8 verdict?

9 JUROR NUMBER TWO: Yes,

10 THE CLERK: Juror number three, is that your
11 verdict?

12 JUROR NUMBER THREE: Yes.

13 THE CLERK: Juror number four, is that your
14 verdict?

15 JUROR NUMBER FOUR: Yes.

16 THE CLERK: Juror number five, is that your
17 verdict?

18 JUROR NUMBER FIVE: Yes.

19 THE CLERK: Juror number six, is that your
20 verdict?

21 JUROR NUMBER SIX: Yes.

22 THE CLERK: Juror number seven, is that your
23 verdict?

24 JUROR NUMBER SEVEN: Yes.

25 THE CLERK: Juror number eight, is that your
verdict?

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2 JUROR NUMBER EIGHT: Yes.

3 THE CLERK: Juror number nine, is that your
4 verdict?

5 JUROR NUMBER NINE: Yes.

6 THE CLERK: Juror number ten, is that your
7 verdict?

8 JUROR NUMBER TEN: Yes.

9 THE CLERK: Juror number eleven, is that your
10 verdict?

11 JUROR NUMBER ELEVEN: Yes.

12 THE CLERK: Juror number twelve, is that your
13 verdict?

14 JUROR NUMBER TWELVE: Yes.

15 THE CLERK: And so say you all. The juror is
16 polled, your Honor.

17 THE COURT: All right, ladies and gentlemen,
18 that concludes the case as far as you are concerned.
19 You go with the thanks of not only this court, but
20 also of some eight million fellow residents in this
21 Eastern District of New York, which, as you know, con-
22 sists of Suffolk, Nassau, Queens, Kings, and Staten
23 Island and they're, believe it or not, eight million
24 of your fellow residents all of whom are indebted to
25 you for the service you have just performed. Without

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2 that service, as I am sure you are now fully aware,
3 there could be no effective administration of justice
4 of the federal system.

5 I am also sure you are fully aware that is not
6 an easy job that you have had to perform. It is one
7 of the most difficult jobs you are called upon as a
8 citizen to perform, namely, to sit on a federal case,
9 and particularly a federal criminal case. So, as I
10 say, you do go with all of our thanks for the atten-
11 tion you have paid to the case and for your conscien-
12 tious efforts throughout the trial. You should take
13 your cards from Mr. Nims, pick up anything you have
14 in the jury room and check out with the central jury
15 room downstairs. Thank you.

16 (Whereupon, the jurors left the courtroom.)
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